

RAAB, STURM & GANCHROW, LLP

COUNSELORS AT LAW
2125 CENTER AVENUE, SUITE 100
FORT LEE, NEW JERSEY 07024
Tel: (201)292-0150
FAX: (201)292-0152

RONALD RAAB*
IRA A. STURM****
ARI D. GANCHROW**

MAURA E. BREEN***
MICHAEL GEFFNER*

* ADMITTED IN NY
** ADMITTED IN NY AND NJ
*** ADMITTED IN NY AND CT
**** ADMITTED IN NY AND FLA

December 11, 2017

The Honorable Jeffrey Gardner
Administrative Law Judge
National Labor Relations Board
Judge's Division
26 Federal Plaza, 17th Floor
New York, New York 10278

Re: Center Line Studios, Inc.
Case No. 2-CA-185189

Dear Judge Gardner,

Please accept the following letter brief in support of the Center Line Studio's, Inc.'s ("Center Line"), request that the Complaint be dismissed in its entirety.

There are two distinct claims of violation by the General Counsel. First, the General Counsel alleges that Center Line violated Sections 8(a) (1) & (5) of the Act by unilaterally ceasing payments to the fringe benefit funds. The Complaint alleges:

Since about March 2016 and venturing to date, Respondent has failed and refused to make payments required by the collective bargaining agreement [to the respective fringe benefit funds].

Second, the General Counsel alleges that Center Line violated Sections 8(a) (1) & (5) of the Act, by since on or about July 25, 2016, failing to provide the charging party, International Alliance of Theatrical Stage Employees, Local 311 ("Union") with the following request going back to January 7, 2013:

a) employee Name, b) work history including dates & hours of employments, c) Position/Title, d) Description of work performed, e) Wage rate paid fee each hour worked g) benefit contributions made for each day worked.

On the allegations concerning refusal to make payments, the evidence established that the refusal was not based upon the issue of unilateral change, but rather based upon financial inability to pay. The General Counsel has not presented an iota of evidence to even remotely suggest that Center Line sought to abrogate its obligation to make fund payments to those for whom payments were undisputedly required under the collective bargaining agreement. Rather, the Union was aware, many months prior to March 2016 (See paragraph 9(a) of the Complaint), that Center Line had ceased making payments to the Funds (See cross examination of witness Chad Phillips). The Union never reached out to Center Line to ascertain the reasons for the non- payments. It was convenient for the Union to advise the General Counsel that the failure to contribute was not due to financial constraints, but rather that Center Line's failure to contribute was a repudiation that occurred within the 10(b) period.¹ The charge was filed September 29, 2016. (See paragraph 1 of the Complaint). The allegation is made that the repudiation was made in March 2016, exactly within the 10(b) period. Unfortunately for General Counsel, Phillips testified that the Union was well aware of the non-payments for many months before March 2016. Even if the Administrative Law Judge was to accept the assertion that the non-payment was based upon a repudiation, the allegations are time barred.

It is hornbook law that an allegation of unilateral changes in terms and conditions of employment is not a continuing violation of the Act. See e.g. Drocker Communications Inc., 258 NLRB 734 (1981), enforcement denied on other grounds, 700 F.2d 727 (D.C. Cir. 1983);

¹ If the repudiation was made in March, prior to the 29th, the Complaint would be dismissible on its face. Phillips confirmed that the alleged unilateral changer occurred "months" outside the 10(b) period.

Continental Oil Co., 194 NLRB 126, 129 (1971); Durfee's Television Cable Co., 174 NLRB 611, 613 (1969), Stage Employees, IATSE Local 659 (Paramount Pictures Corp., 276 NLRB 881, 882 (1985). Since the cessation of payments to the funds was admitted by Union president Phillips to have occurred outside of the six month limitations period, the allegations concerning unilateral changes are time barred. Accord, St. Barnabas Medical Center, 343 N.L.R.B. 1125 (2004)

Thus, we now turn to the information request. As an initial matter, the allegation sought information going back over three years beyond the 10(b) period. Paragraph 10(a) of the Complaint asserts that the Union requested information going back to January 7, 2013. It is recognized that if the information sought outside of the 10(b) period is merely to shed light on the violations that occurred within the 10(b) period, then such requests are presumptively appropriate. See Dodger Theatricals Holdings Inc., 347 NLRB 953, 966 (2006). However, at hand, the request was premised upon the untimely cessation of payments to the Fund. The Union's request was, per se, not within the remedial auspices of the Act. Thus, regardless of Center Line's efforts to comply, there can be no violation on the failure to provide information allegations. The information requested by the Union related to a cessation of payments asserted to constitute a unilateral change. The unilateral change is time barred. The information request cannot be used to resurrect an untimely claim.

Assuming arguendo that the request was within the province of conduct covered by the Act, the Union had an affirmative obligation to confer with Center Line in trying to reach an accommodation of the Union's request. The Union and the General Counsel have not credibly challenged the veracity of Center Line's position that the information was not retrievable because of Center Line's problem with its payroll services. Center Line made numerous suggestions in compromise. Center Line made offers of compromise because it was unable to retrieve its own

computer records. Yet, the Union had a vested interest in having Center Line put out of business so that the Center Line work would go only to Union President Phillip's employer. The Union was unwilling to discuss, much less compromise, on its information request. Even when presented with Center Line's inability to comply and attempt to provide the requested information at the arbitration proceeding, the Union continued to seek to compel production going back to 2013. The Union had an affirmative obligation to try to meet an accommodation. Madison Foods, 345 NLRB 788 (2009). Compounding the problem, was the Union's absolute refusal to provide its shop steward reports that would either corroborate or contradict the limited information that Center Line was able to retrieve. (See, G.C. Ex. 10). Merely saying that all the information requested was not on the shop steward report (G.C. Ex 11), does not excuse the Union from its refusal to produce information needed by Center Line in its attempts to satisfy the Union's request for information. The facts of this case have provided credible evidence of the Union's hostility. Such must be factored into the equation of the bona fides of the request and whether a violation can be established. (See e.g. ALJ analysis in United Parcel Services of America, Inc., 2013 NLRB Lexis 556 at* (L)-16 (2013).

As asserted throughout by Center Line, the issue in dispute was the failure to make contributions, the identities of those for whom contributions were required, and, how much was required to be paid to the fringe benefit funds. This is a simple contract interpretation issue. It is not something of which the Board concerns itself. J&R Flooring d/b/a Picini Flooring, 355 NLRB 606 (2010), Atwood & Morrill Co., 289 NLRB 794, 795 (1988).

General Counsel placed into evidence documents relating to the Region's initial deferral and the rescission of the deferral. The Judge is asked to ignore these documents as neither document was reviewable or subject to review. Had the Regional Director followed deferral

guidelines, the charge would have been dismissed as time barred or without merit, for the reasons set forth above. As the charge had no merit it should have been dismissed and not been the subject of an improper deferral.

Based on the above and the record as a whole, Respondent respectfully urges that the Complaint be dismissed in it's entirety.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Ira A. Sturm', with a long horizontal flourish extending to the right.

Ira A. Sturm

Cc: Lydia Sigelakis, Esq.
Spivak Lipton, LLP.
1700 Broadwing, 21st floor
New York, New York 10019

Gregory B. Davis, Esq.
NLRB Region 2
26 Federal Plaza 36th floor
New York, New York 10278